IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9764 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVALIK ROAD LINES

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9764 of 2002

MR HASHIM QURESHI for Petitioner No. 1-2

MR KOTAK, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 14/10/2002

ORAL JUDGEMENT

Rule. Mr. Kotak, learned AGP appears and waives service of notice of rule on behalf of the respondents.

2. In this petition which is filed under Article 226 of the Constitution, petitioner whose vehicle came to be seized and detained by the Respondent No.3 at Check Post Songadh Dist. Surat, has prayed for the following reliefs:

a) Be pleased to issue a writ of mandamus writ in nature of mandamus commanding the respondent No.3 to act as per the provision of Bombay Motor Vehicle Rules 1989 and Gujarat Transport Vehicle Toll Act 1992.

b) Be pleased to further hold that under the provision of law the Respondent no.3 has no authority to detain the vehicle in question against the rules but it should be released after imposing penalty.

c) During the pendency and final disposal of this petition the Respondent No.3 may be directed to release consignment loaded in Lorry in question since the respondent No. 3 has no authority under the Toll Act or even Bombay Motor Vehicle Act to detain the same.

d) Any further relief in the interest of justice may kindly be granted.

3. Having heard Mr. Hashim Qureshi, learned advocate for the petitioners and Mr. Kotak, learned AGP for the respondents, and on having perusal of the averments made in the memo of the petition, grounds set out therein and more particularly the relief clause, I am of the opinion that there cannot be any objection in granting the relief as claimed in this petition, because by claiming the said relief, petitioner has prayed to issue a writ of mandamus against Respondent No.3 to act as per the Bombay Motor Vehicle Rules 1989 and Gujarat Transport Vehicle Toll Act, 1992 and further prayed that Respondent No.3 has no authority to detain the vehicle in question against the rules, but it should be released after imposing penalty and in accordance with law.

4. Mr. Kotak, learned AGP for the respondent states that respondent has not acted contrary to the provisions of Act and Rules nor the vehicle in question has been seized and detained against the statutory provisions contained under the Rules. He further states that the vehicle can certainly be released on imposing tax and penalty upon the petitioner.

5. In view of this, respondent no.2 is directed to adjudicate the tax and penalty and on payment of the tax and penalty by the petitioner, the vehicle in question be released forthwith.

6. In view of the aforesaid observations and directions, petition is disposed of. Rule is made absolute.

Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*